

Office of Chief Counsel  
Internal Revenue Service

memorandum

CC:LM:FSH:[REDACTED]:TL-N-6169-00  
[REDACTED]

date:

to:

[REDACTED]  
Team Manager, Group [REDACTED], LMSB:FSH

from:

[REDACTED]  
Associate Area Counsel, CC:LMSB:FSH:[REDACTED]

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subject: Form 872

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LEGEND

X

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[REDACTED]

Y

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[REDACTED]

YY

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[REDACTED]

Z

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[REDACTED]

This memorandum is in response to your request for advice on language that should be included on Forms 872 signed to extend the statute of limitations for the consolidated group of which Y was the parent, for tax years prior to the company's demutualization. We recommend that Form 872 for those years be signed by both YY and Z.

Y (Old Parent) was the common parent of an affiliated group filing a life-nonlife consolidated return. On or about [REDACTED], Old Parent was converted from a mutual to a stock life insurance company, and the converted company became a first tier

subsidiary of a corporation (Z) formed to hold its stock. The conversion was done pursuant to [REDACTED].

It was accomplished through the following steps. Old Parent formed a wholly owned subsidiary, Z. By operation of law, Old Parent (Y) converted from a mutual life insurance company to a stock life insurance company named YY. The stock of the converted company was issued to Z, and Y surrendered to Z the common stock it held in Z. YY thereby became a subsidiary of Z (New Parent). On the same date, New Parent (Z) sold newly issued shares in an initial public offering. Subsequently, policyholders of Old Parent (Y) who were eligible to participate in the demutualization and who had elected to participate received common stock in New Parent (Z) in exchange for the extinguishment of their membership rights in Old Parent (Y). Nonparticipating eligible policyholders received cash or policy credits.

Y did not receive a private letter ruling from the Internal Revenue Service on the tax consequences of the demutualization. Y received an opinion from its tax counsel stating tax counsel's conclusions about the tax consequences to the Y and the policyholders. The opinion concluded, *inter alia*, that policyholders receiving solely holding company stock would not recognize gain or loss, the company would not recognize any income, gain or loss, the affiliated group of which Y was the common parent would remain in existence, and YY would be the same company as Y for federal income tax purposes.

Section 1.1502-77T provides for alternative agents for an affiliated group of corporations filing a consolidated return, for giving waivers of the statute of limitations, when, as in this case, the corporation that is the common parent of the group ceases to be the common parent. See § 1.1502-77T(a)(3). The rules in § 1.1502-77T apply whether or not the group remains in existence under § 1.1502-75(d). § 1.1502-77T(a)(1). In this case, the potential alternative agents under § 1.1502-77T are the converted insurer, YY, and the parent holding company, Z.

Under § 1.1502-77(a)(4)(i), the common parent of the group for all or any part of the year to which the notice or waiver applies is a deemed agent. If the converted insurer, YY, is the same corporation as Y under [REDACTED], then [REDACTED] would be an alternative agent of the Z consolidated group for any of the preconversion years. Section 1.1502-77T(a)(4)(iv) provides that if a group remains in existence under § 1.1502-75(d)(3), the common parent at the time a waiver of the statute of limitations is given is deemed to be an agent of the group for purposes of the waiver. Thus, if the X consolidated group

remained in existence following the reorganization, the new common parent, Z would be an alternative agent for preconversion years.

It is not certain that the corporate existence of the mutual insurer was continued in the converted insurer. [REDACTED]

Y posited in the proposed plan of reorganization, which was approved by the State [REDACTED], that the stock company was a continuation of the mutual company. We are not disputing this position, and it is unlikely that the taxpayer would disavow this position later. However, it is possible that the issue could be raised by a third party.

If YY would fail to qualify as an alternative agent under § 1.1502-77T(a)(4)(i) because it does not continue the corporate existence of Y, that does not mean it could qualify as an alternative agent under § 1.1502-77T(a)(4)(ii). Section 1.1502-77T(a)(4)(ii) applies only to a successor in a transaction to which section 381(a) applies. In this case, the demutualization of [REDACTED], if a tax free reorganization, would likely be treated as a

reorganization under section 368(a)(1)(E),\* which is not a transaction to which section 381(a) applies.

New Parent is another potential agent for the group for prechange years. Section 1.1502-77T(a)(4)(iv) provides that if a group remains in existence under § 1.1502-75(d)(3), the common parent at the time a waiver of the statute of limitations is given is deemed to be an agent of the group for purposes of the waiver. We understand that the taxpayer's position is that the consolidated group remained in existence following the reorganization, and as far as we know you do not question this position.

Section 1.1502-75(d)(2)(ii) provides that a consolidated group remains in existence notwithstanding that the common parent is no longer in existence if the members of the affiliated group succeed to and become owners of substantially all of the assets of the former parent and there remains one or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation and that was a member of the group prior to the date the former parent ceases to exist. However, the Service has applied this provision even in a case in

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\* The only published guidance on an insurance company demutualization is Rev. Rul. 73-510, 1973-2 CB 386. That ruling addressed a conversion in which only policyholders received stock in the new stock company, and all of the policyholders participated. Rev. Rul. 73-510 holds that the conversion was a reorganization under section 368(a)(1)(F) of the Internal Revenue Code.

However, the Service has subsequently issued private letter rulings treating mutual insurance company to stock insurance company conversions as reorganizations under section 368(a)(1)(E) of the Code. In ruling on a transaction similar to the one pursuant to which Y demutualized, the Service concluded that the transaction should be treated as the exchange by the policyholders of their membership rights in Old Parent for Old Parent stock, followed by the policyholders' transfer of the Old Parent stock to New Parent in exchange for New Parent stock. The Service ruled that the deemed exchange of membership rights in Old Parent for Old Parent stock was a recapitalization under section 368(a)(1)(E).

It could be argued that Old Parent must be an alternative agent under either § 1.1502-77T(a)(4)(i) or (ii). This argument would be based on the premise that an "E" reorganization can involve only a single corporate entity. This premise is likely but not undoubtedly correct.

which the former common parent remains in existence. Rev. Rul. 82-152, 1982-2 C.B. 205, states that the function of § 1.1502-75(d)(2)(ii) is to recognize the continuity of an affiliated group after a transaction that, even though formally restructuring the group, did not effect any substantial change in the composition of the group (judged by the underlying assets of the group).

The reorganization in this case may not fit the literal terms of § 1.1502-75(d)(2)(ii) because Old Parent may have remained in existence. However, it would appear, given the purpose of § 1.1502-75(d)(2)(ii) and how it has been applied, that the Service would agree with Y's counsel that the [REDACTED] group continued in existence following the reorganization.

Because of the uncertainty concerning whether YY continues the corporate existence of Y, and because the transaction does not fit the terms of § 1.1502-75(d)(2)(ii) precisely, out of abundance of caution we recommend that you obtain the consent of both YY and Z, and that you use the EIN of Y on the Form 872. We do not recommend a parenthetical reference to Y on the consent.

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